Before the Administrative Hearing Commission State of Missouri



FRED & BEVERLY WHIGHAM,)	
)	
Petitioners,)	
)	
VS.)	No. 14-1524 RS
)	
DIRECTOR OF REVENUE,)	
)	
Respondent.)	

DECISION

We dismiss Fred and Beverly Whigham's appeal because it was untimely filed.

Procedure

On September 9, 2014, the Whighams filed a complaint appealing an assessment issued to them, as responsible parties, by the Director of Revenue ("the Director"). On October 15, 2014, the Director filed a motion to dismiss for the reason that the appeal was untimely. We notified Jefferson Park South, Inc., through its President, Fred Whigham, that Jefferson Park could respond to the motion by October 31, 2014, but no response was filed on behalf of the corporation. On November 21, 2014, we notified the Whighams that the appeal was improperly captioned as filed on behalf of the corporation, that the Commission was going to correct the error, and that they could respond to the Director's motion to dismiss by December 5, 2014. No response was filed on behalf of the Whighams.

We may grant a motion for involuntary dismissal based on a preponderance of admissible evidence.¹ Admissible evidence includes any allegation in the complaint, discovery response of the petitioner, affidavit, or other evidence admissible under the law.² The Director filed the affidavit of a custodian of records with his motion. We base our findings of fact on the contents of the complaint filed by the Whighams and the Director's affidavit.

Findings of Fact

- 1. The Director issued an assessment of unpaid sales tax to the Whighams as responsible parties for Jefferson Park South, Inc. The assessment was sent by certified mail to each of the Whighams on February 28, 2014.
- 2. The assessment notices are dated February 28, 2014, and state the assessment against them for Jefferson Park South was to become due and payable 60 days from the assessment date.
 - 3. The assessment contains the following notification:

This assessment is the Final Decision of the Director of Revenue. If you are adversely affected by this decision, you may appeal to the Administrative Hearing Commission. To appeal, you must file a petition with the Administrative Hearing Commission within sixty (60) days after the date this decision was mailed or the date it was delivered, whichever date was earlier. If any such petition is sent by registered mail or certified mail, it will be deemed filed on the date it is mailed. If it is sent by any method other than registered mail or certified mail, it will be deemed filed on the date it is received by the commission (Section 621.050.1, RSMo).

Appeals should be sent to the Administrative Hearing Commission, P.O. Box 1557, Jefferson City, Missouri 65102-1557.

- 4. The Whighams filed an appeal on September 9, 2014.
- 5. September 9, 2014 was more than 60 days after February 28, 2014.

Regulation 1 CSR 15-3.436(3). All references to the CSR are to the Missouri Code of State Regulations as current with amendments included in the Missouri Register through the most recent update.

 $^{^{2}}$ Id.

Conclusions of Law

This Commission has jurisdiction over appeals from the Director's final decisions.³ However, our jurisdiction comes from the statutes alone, and is bounded by those statutes.⁴ Section 144.261, which applies to appeals from sales tax assessments, states:

Final decisions of the director under the provisions of this chapter are reviewable by the filing of a petition with the administrative hearing commission in the manner provided in section 621.050, RSMo; except that, notwithstanding the provisions of section 621.050, RSMo, to the contrary, such petition must be filed within sixty days after the mailing or delivery of such decision, whichever is earlier.

(Emphasis added.)

In this case, the Director mailed his final decision to the Whighams on February 28, 2014. Although notified of their appeal rights, the Whighams filed an appeal on September 9, 2014 – more than sixty days after February 28, 2014. This untimely filing deprives us of authority to hear their appeal.

If we have no jurisdiction to hear the appeal, we cannot reach the merits of the case and can only exercise our inherent power to dismiss.⁵ Accordingly, we grant the Director's motion.

Summary

We grant the Director's motion to dismiss.

SO ORDERED on December 10, 2014.

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³ Section 621.050. Statutory references are to RSMo 2000, unless otherwise noted.

⁴ State Bd. of Regis'n for the Healing Arts v. Masters, 512 S.W.2d 150, 161 (Mo. App. K.C.D. 1974).

⁵ Oberreiter v. Fullbright Trucking, 24 S.W.3d 727, 729 (Mo. App. E.D. 2000).